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APPLICATION OF SOUTHWESTERN § BEFORE THE STATE OFFICE
ELECTRIC POWER COMPANY FOR §
CERTIFICATE OF CONVENIENCE AND §
NECESSITY AUTHORIZATION AND § OF
RELATED RELIEF FOR THE §
ACQUISITION OF WIND GENERATION §
FACILITIES § ADMINISTRATIVE HEARINGS

EXCEPTIONS TO THE PROPOSAL FOR DECISION OF
EAST TEXAS ELECTRIC COOPERATIVE, INC. AND
NORTHEAST TEXAS ELECTRIC COOPERATIVE, INC.

NOW COMES East Texas Electric Cooperative, Inc. ("ETEC") and Northeast Texas Electric Cooperative, Inc. ("NTEC") and files its Exceptions to the Proposal for Decision ("PFD"). ETEC and NTEC appreciate the significant time and effort evident in the PFD and generally agree with its findings.

I. INTRODUCTION

ETEC and NTEC agree with the PFD's recommended denial of Southwestern Electric Power Company's ("SWEPCO") request for authorization to acquire certain wind facilities (the "Selected Wind Facilities").¹ As the PFD states, this case is similar to *Wind Catcher*, which the Commission rejected.² In fact, the PFD finds that certain flaws identified by the Commission in *Wind Catcher* are more pronounced in the present case. These flaws include overly optimistic costs savings and inadequate accounting for the cost of a generation tie line (gen-tie) and

¹ PFD at 1-2. Total project costs including the Purchase and Sale Agreement price adjustments are expected to be \$1.996 billion. SWEPCO proposes to acquire a 54.5% share, with SWEPCO's sister company, Public Service Company of Oklahoma (PSO), acquiring the remaining 45.5%.

² PFD at 4-5. *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization and Related Relief for the Wind Catcher Energy Connection Project in Oklahoma*, Docket No. 47461, Order (Aug. 13, 2018) ("Wind Catcher").

congestion costs.³ The weight of the evidence supports these conclusions. ETEC and NTEC request they be adopted in the Commission's order.

The PFD states that, given its recommendation of denial, the Commission may not need to reach the question of whether PURA § 14.101 applies.⁴ To the extent the question is addressed, however, ETEC and NTEC request the Commission find that a public interest determination under PURA § 14.101 is required for the application and that such a determination must consider the effect of the proposed transaction on all Texas customers. Accordingly, ETEC and NTEC recommend the following change be made to Conclusion of Law No. 1:

“The Commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act, Texas Utilities Code §§ 14.001, § 14.101, 36.203, 36.204, 37.051, 37.053, 37.056, and 37.057 (PURA).”

As discussed below, such a finding is consistent with past Commission determinations and practical considerations.

XI. XI. SALE, TRANSFER, MERGER ISSUES (P.O. ISSUE NOS. 13, 14, 15, 16, 17, 18)⁵

The PFD acknowledges that Commission Staff, Golden Spread Electric Cooperative, ETEC and NTEC all support the Commission applying the public interest standard under PURA § 14.101.⁶ Although not enshrined in a final Commission order, this public interest finding is consistent with the Commission's preliminary determinations. As parties cited in their testimony and briefs, the Commission has made a public interest determination under PURA § 14.101 for similar applications involving out-of-state facilities.⁷ These include:

³ PFD at 5, 57-70.

⁴ PFD at 108.

⁵ ETEC and NTEC are following and referencing the section numbers used in the PFD, as requested by the Exceptions Memo (May 28, 2020).

⁶ PFD at 105.

⁷ ETEC/NTEC's Initial Brief at 21 (Mar. 9, 2020) (*citing* ETEC/NTEC Ex. 1a, Direct Testimony and Exhibits of James W. Daniel at Bates JWD_00010).

1. a combined cycle unit located in Arkansas (*see* Docket No. 43958, Preliminary Order, Issue No. 15 (Mar. 10, 2015) (requiring a determination on “Is it in the public interest as set forth in PURA § 14.101 for Entergy to acquire Union Power Station Power Block 1? In addressing this issue please cover the following factors: [. . .]”)); and
2. transmission facilities located outside of Texas that were part of a system that is used to serve Texas customers, as well as part of the integrated system of the Southwest Power Pool (*see* Docket No. 45291, Preliminary Order (Mar. 25, 2016) (stating “).

Similarly, in Docket No. 46936, Southwestern Public Service Company (“SPS”) submitted a CCN application for wind generation facilities located in both Texas and New Mexico. In its application, SPS requested a finding under PURA § 14.101. However, the final order did not refer to PURA § 14.101 in its discussion or among the statutory authorities in its conclusions of law. Because the case was resolved by settlement, however, the PFD notes the precedential value of that exclusion is limited.⁸ Moreover, because one of the wind facilities was located in Texas, no party likely would have argued that geography precluded PURA § 14.101 from applying. Thus, it appears the exclusion of PURA § 14.101 was either an inadvertent error or meant to reserve the issue by agreement of the parties.

From a practical perspective, Mr. Daniel testified that it is unreasonable for SWEPCO to seek the Commission’s approval of a multi-billion dollar project without finding a public interest determination. Similarly, sound public policy would suggest that such a determination is necessary to fulfill the purpose of the statute and prevent entities from escaping Commission review by locating assets across the border. In this case, by applying the public interest standard under PURA § 14.101, the Commission can ensure SWEPCO is responsible for the burden of demonstrating a sufficient public interest to justify the cost.

ETEC and NTEC therefore recommend the following change be made to Conclusion of Law No. 1:

⁸ PFD at 109 (“The precedent is somewhat murky because the Commission’s final order in SPS Hale and Sagamore approved a unanimous settlement, rather than resulting from a full hearing and briefing on contested issues.”).

“The Commission has jurisdiction over this matter pursuant to Public Utility Regulatory Act, Texas Utilities Code §§ 14.001, § 14.101, 36.203, 36.204, 37.051, 37.053, 37.056, and 37.057 (PURA).”

XV. CONCLUSION

As discussed above, ETEC and NTEC respectfully request the Commission adopt the PFD’s recommendation and find that SWEPCO has not met its burden of proof in this proceeding. In addition, ETEC and NTEC recommend the Commission revise Conclusion of Law No. 1 to include PURA § 14.101 as an applicable statutory authority for this proceeding.

Respectfully submitted,

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**ATTORNEYS FOR EAST TEXAS ELECTRIC COOPERATIVE, INC.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered, electronically emailed and/or mailed by First Class, U.S. Mail, postage pre-paid this 11th day of June, 2020 to all parties of record.

/s/ Jacob Lawler
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